

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>CIRO MARQUEZ CHAVEZ,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>1:07CV509</b>
<b>v.</b>	)	<b>1:97CR265-1</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Petitioner in this action has submitted a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and 28 U.S.C. § 2255 based partially on an amendment to the sentencing guidelines. Petitioner identifies Amendment 599 as the amendment he seeks to have applied to his sentence. The United States Attorney is directed to file a response to this portion of his motion within sixty (60) days from the date of the entry of this Order.

The motion also includes a request for a “downward departure” under “18 U.S.C. SECTION § 3553(b)(e)” [sic]. It appears Petitioner actually means either 18 U.S.C. § 3553(e) or 18 U.S.C. § 3553(b) and (e). In either event, the provisions he cites are provisions that are applied at the time of sentencing and not years afterward. He gives no explanation or basis for applying them at this time. Therefore, it appears that his arguments really should be brought pursuant to a motion under § 2255. Unfortunately for Petitioner, his arguments are not on the proper forms for such a motion. Therefore, they should be

dismissed without prejudice to Petitioner filing them on the proper forms. The Clerk will provide Petitioner with § 2255 forms and instructions.

**IT IS THEREFORE ORDERED** that the United States Attorney file a response, within sixty days from the date of entry of this Order, to the portion of this motion seeking to use Amendment 599 to obtain relief under 18 U.S.C. § 3582(c)(2).

**IT IS FURTHER ORDERED** that the Clerk is instructed to send Petitioner § 2255 forms and instructions.

**IT IS THEREFORE RECOMMENDED** that the portion of this motion seeking a downward departure under 18 U.S.C. § 3553 be construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and dismissed sua sponte without prejudice to Petitioner filing a corrected motion on the proper § 2255 forms.

/s/ P. Trevor Sharp  
United States Magistrate Judge

Date: July 18, 2007